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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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|----------------------------|---|-------------------------------------|
| UNITED STATES OF AMERICA, |) | Case No. CR 18-577 CRB |
| |) | |
| Plaintiff, |) | UNITED STATES' OPPOSITION TO |
| |) | DEFENDANT'S EX PARTE APPLICATION TO |
| v. |) | CLARIFY CONDITIONS OF BOND FOR |
| |) | DEFENDANT STEPHEN CHAMBERLAIN |
| STEPHEN KEITH CHAMBERLAIN, |) | |
| |) | Hearing Date: September 25, 2019 |
| Defendant. |) | Time: 1:30 p.m. |
| |) | Courtroom 6, 17th Floor |
| |) | |
| |) | |

INTRODUCTION

The Court should deny the ex parte application. To the extent the defendant seeks to travel to the United States to attend Court appearances and defend against the Superseding Indictment, the government will continue to secure his parole into the United States, as it has done previously. No order of this Court is necessary. To the extent the defendant demands entry into the United States for any other purpose, including to conduct business on behalf of co-defendant Michael Lynch's ventures Darktrace Limited and ICP London Limited ("Invoke Capital"), he has not demonstrated he is entitled to

1 relief nor is “clarification” of the Court’s Order Setting Conditions of Release and Appearance Bond the
2 appropriate vehicle to do so.

3 **FACTUAL BACKGROUND**

4 On November 29, 2018, the Grand Jury returned an indictment against Michael Lynch and
5 Stephen Chamberlain, former officers of Autonomy Corporation plc. ECF No. 1.

6 On February 4, 2019, Mr. Chamberlain made an initial appearance. ECF No. 13. The Court
7 issued an Order Setting Conditions of Release and Appearance Bond, setting an unsecured, \$1,000 bond.
8 ECF No. 14. The Order imposed numerous conditions on Mr. Chamberlain, including that he appear at
9 all proceedings as ordered by the Court and surrender for service of any sentence imposed; that he not
10 commit any federal, state, or local crime; and that he not harass, threaten, injure, tamper with, or
11 retaliate against any witness. *Id.* The Court further checked the box for “[t]he following conditions also
12 apply” and wrote: “1) Cannot travel to another country that does not have an extradition treaty with the
13 U.S. [and] 2) Travel otherwise allowed and he may continue to reside in the U.K.” *Id.*

14 The defendant, evidently, is not eligible for admission to the United States. To ensure that the
15 defendant can appear for Court proceedings, the Federal Bureau of Investigation (“FBI”) has applied to
16 the Department of Homeland Security, Immigration and Customs Enforcement (“ICE”) for the
17 defendant’s admission under 8 U.S.C. § 1182(d)(5), which permits “parole into the United
18 States temporarily . . . only on a case-by-case basis for urgent humanitarian reasons or significant public
19 benefit.” 8 U.S.C. § 1182(d)(5). Significant public benefit parole generally may be granted for aliens
20 “who will participate in administrative, judicial, or legislative proceedings” including “individual[s]
21 necessary for prosecution or investigation in the U.S.” *See*
22 <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf> (“Parole Authority MOA”); *see*
23 *also* 8 C.F.R. § 212.5 (providing parole is generally justified only on a case-by-case basis for
24 “significant public benefit” for “[a]liens who will be witnesses in proceedings being, or to be, conducted
25 by judicial, administrative, or legislative bodies in the United States”). “Parole is an extraordinary
26 measure, sparingly used . . . and is not to be used to circumvent normal visa processes and timelines.”

1 Parole Authority MOA at 2. In its parole application, the FBI is required to assume responsibility to
2 monitor the actions of the parolee while in the United States.

3 On April 2, 2019, the defendant appeared for a status conference. In advance of that hearing, the
4 FBI applied for parole on the defendant's behalf, which ICE granted.

5 In advance of the next scheduled Court appearance, July 10, 2019, the FBI again applied for
6 parole on the defendant's behalf. On July 1, 2019, upon stipulation by the parties, the Court continued
7 the status conference to July 17, 2019. ECF No. 32. The defendant's appearance at the July 17, 2019
8 status conference was waived. ECF Nos. 29 & 33. Nonetheless, the defendant was granted parole, and
9 on July 8, 2019, the FBI contacted the defendant to make arrangements for him to pick up the parole
10 paperwork for travel to the United States, which was scheduled for July 9, 2019. The defendant
11 informed the FBI he was no longer traveling.

12 Throughout July and August, the defendant sought the FBI's assistance to travel to the United
13 States from August 4, 2019, through August 9, 2019. But the defendant's proposed travel to Boston and
14 New York was only for the purpose of business (the defendant is employed by Invoke Capital's venture
15 Darktrace Limited) Parole for this travel under the significant public benefit exception was not granted.

16 **ARGUMENT**

17 To the extent the defendant seeks to travel to the United States to attend Court appearances and
18 defend against the Superseding Indictment, no order is necessary. The government diligently has
19 sought, and will continue to seek, his parole into the United States for such purposes under the
20 significant public benefit exception. The defendant is apparently dissatisfied with the time it takes for
21 such matters to be resolved. His insistence on an order is an unwarranted attempt to have ICE put any
22 application on his behalf at the top of the line, at the expense of other defendants, witnesses, and other
23 aliens needed for proceedings in the United States. The Court should decline to interfere at this
24 juncture.

25 To the extent the defendant demands entry into the United States for any other purpose,
26 including to conduct business, the Bail Reform Act of 1984 does not afford him relief. *See generally* 18
27 U.S.C. §§ 3142-3156. That act authorizes courts to impose conditions on defendants to secure their

1 appearance for trial, not to impose obligations on the immigration authorities. For this reason, the
2 Court's form Order Setting Conditions of Release and Appearance Bond includes a condition *limiting*
3 travel to certain jurisdictions, not requiring those jurisdictions to admit the defendant regardless of his
4 qualifications for admission. *See, e.g.*, ECF No. 14. The defendant cites no case, statute, or rule for the
5 proposition a criminal defendant must be admitted to the United States for purposes not related to the
6 criminal proceeding, and this Court should refrain from ordering ICE, which is not before the Court, or
7 any other agency, from deviating from their ordinary procedures under existing statutes and regulations.
8 It would be particularly inappropriate to do so based on the bare bones application before the Court that
9 cites nothing further than the Bail Reform Act.

10 **CONCLUSION**

11 For these reasons, the Court should deny the ex parte application.

12 DATED: September 10, 2019

DAVID L. ANDERSON
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13 /s/

14 _____
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